

# **EXHIBIT J**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

- - -

DIVERSI-PLAST PRODUCTS, INC., )  
a Minnesota Corporation, )  
Plaintiff, )

No. 2:04CV01005 PGC

v. )

BATTENS PLUS, INC., a )  
California Corporation, )  
Defendant. )

**CERTIFIED COPY**

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BATTENS PLUS, INC., a )  
California Corporation, )  
Counterclaimant, )

v. )

DIVERSI-PLAST PRODUCTS, INC., )  
a Minnesota Corporation, )  
Counter-Defendant.)

DEPOSITION OF

LARS J. WALBERG

Glenwood Springs, Colorado

January 13, 2006

ATKINSON-BAKER, INC.

COURT REPORTERS

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REPORTED BY: PATRICIA VIGIL-LADNER, RPR

FILE NO.: 9F0A5B8

1 attention, they sent me a -- sent me some product  
2 and that product is what we applied to a test  
3 deck that was four feet by eight feet and did the  
4 tests.

5 Q. First of all, what time period are we  
6 talking about when this occurred?

7 A. '97, '98.

8 Q. Do you know what period of months of '97  
9 or '98?

10 A. All that I can remember is it was warm.

11 Q. It was a warm period of time?

12 A. I mean, it was reasonable weather. Now I  
13 don't know -- it doesn't seem to me that it was  
14 summer, but then it wasn't -- I don't recall it  
15 being -- it was comfortable weather.

16 Q. So it was warm weather in Colorado, and  
17 that would lead you to believe that it was not  
18 winter; is that correct?

19 A. Yes.

20 Q. What was the first idea that you  
21 mentioned?

22 MR. MACARI: Objection, vague.

23 THE WITNESS: What do you mean?

24 Q. (By Mr. Wilcox) You said that you  
25 communicated with Diversi-Plast an idea and they

1 sent you a product. What was this idea?

2 A. My idea was to take -- this -- if you  
3 look at the -- we'd sold the ridge vent. The  
4 ridge vent is made up of corrugated plastic  
5 that's similar to this.

6 Q. Hang on a minute --

7 A. Similar to the tile batten, flow-thru  
8 batten.

9 Q. Which is Exhibit Number 3?

10 A. Right. I'm very familiar with concrete  
11 tile and clay tile roofs and their application.  
12 One of the shortcomings of concrete tile and clay  
13 tile roofs is how they are applied to the roof.  
14 In that, there is always some amount of moisture  
15 that gets past the tile and then would flow down  
16 on top of the felt paper, flow down underneath  
17 the tile, that's why you have felt paper.

18 At that time in Colorado and throughout  
19 most of the west, tile was applied to four-foot  
20 cedar battens that were applied on top of felt  
21 paper.

22 Q. Okay.

23 A. Those effectively work as dams, turning  
24 water that gets under the tile. Over time that  
25 can lead to leaks.

1 Q. Now it can lead to leaks?

2 A. Where the moisture is going to find its  
3 way through the felt paper and into the attic  
4 space or rot the deck. I was aware of many tile  
5 roofs in Colorado that had been, after six or  
6 seven years had been torn off and contractors had  
7 gone back in with new underlayment and would put  
8 down what we called lath and batten systems.

9 Q. What is a lath and batten system?

10 A. Lath and batten is where you have  
11 vertical pieces of lath. Lath is typically  
12 three-eighths of an inch thick to a half an inch  
13 thick and about an inch and a half wide. Those  
14 would be applied, generally speaking, 16 inches  
15 on center on top of underlayment, and then the  
16 white wood battens, typically because they are  
17 stronger than cedar, would be applied  
18 horizontally on top of the lath. The purpose of  
19 that is to get rid of dams, so you don't have any  
20 dams underneath the tile.

21 Q. To clarify, the lath is put on with the  
22 slope of the roof; is that correct?

23 A. Correct.

24 Q. And the batten is then put on top of the  
25 lath?

1 A. Right.

2 Q. Horizontally?

3 A. Right, and provides the substrate for the  
4 tile to rest on.

5 Q. Okay. Now you mentioned that a ridge  
6 vent led you to this idea; is that correct?

7 A. Yes.

8 Q. What is the difference between a ridge  
9 vent and your idea?

10 MR. MACARI: Objection, vague.

11 THE WITNESS: The usage.

12 Q. (By Mr. Wilcox) What is the structure of  
13 the ridge vent that you mentioned? How does it  
14 differ from --

15 A. How does a ridge vent differ from this?

16 Q. From your idea?

17 A. Obviously, the dimensions are different.  
18 Typically ridge vent is softer, comes in a roll.  
19 You don't need the structural component that you  
20 need in a batten. I think there is also probably  
21 a difference in relation to -- well, no, that's  
22 not true. I think that's probably about -- I  
23 mean, it's similar in that they both have flutes.

24 Q. Can you describe what you mean by flutes?

25 A. Well, the flutes are the areas between

1 corrugations that allow air or water to pass  
2 through.

3 Q. So you formulated this idea and you spoke  
4 to Diversi-Plast about it?

5 A. Yes.

6 Q. How did you describe the idea to  
7 Diversi-Plast? What did you tell them?

8 A. Much like what we've discussed this  
9 morning, discussed how tile roofs are installed,  
10 the shortcomings of battens applied to the deck,  
11 directly to the deck, the need for a batten that  
12 would be strong enough to support the tile and  
13 yet allow the passage of air and water to go  
14 through the batten.

15 Q. Who were you speaking to at this time?

16 A. The best of my -- I know I had  
17 conversations with Gary Urbanski, and I believe  
18 the first conversations I had were with Jim  
19 Augustine, but I don't remember.

20 Q. How did a soffit vent get involved in the  
21 idea?

22 MR. MACARI: Objection, vague.

23 THE WITNESS: I guess the soffit vent got  
24 involved in the idea in that, that's what was --  
25 those were -- they may have been the samples that

1 Q. And you remember that it was warm?

2 A. Yes.

3 Q. Now they sent you this product and you  
4 used it. Tell me how you used it and what you  
5 did?

6 A. We built a deck at about -- a roof deck.  
7 We simulated a roof deck at about a four and  
8 twelve pitch, using two-by-fours to make it rigid  
9 on the bottom. Took a four-by-eight sheet, had  
10 it resting on a saw horse, guessing it was a four  
11 and twelve pitch. Applied 30-pound felt paper,  
12 asphalt saturated felt paper to the deck, just as  
13 a roofer would to a roof, and then we applied  
14 these -- well, we applied the product that was  
15 sent --

16 Q. Just for a second. When you referred to  
17 "these," you referred to Exhibit Number 3. Now,  
18 do you remember, did the product that was sent  
19 differ from Exhibit Number 3?

20 A. Yes.

21 Q. How did it differ?

22 A. I believe thickness-wise it was about the  
23 same as this, which I'm guessing is, what, about  
24 five-eighths of an inch, a little bit more, maybe  
25 three-quarters of an inch, an inch and a half to



1 two inches wide, and I believe that they were in  
2 four-foot strips. I don't remember for sure.

3 Q. Okay.

4 A. They were opaque. They weren't black,  
5 and that's about all that I can remember about  
6 it.

7 Q. Okay. As far as the way the corrugations  
8 and passage ways going through Exhibit Number 3,  
9 were they similar?

10 A. Yes.

11 Q. You said when you were conducting this  
12 experiment that "we" did this. Who participated  
13 in this?

14 A. Well, it was mostly me. Misty Guess,  
15 that worked for me as an administrative  
16 assistant, would come out and look at it on  
17 occasion.

18 Q. So this structure was on two by fours, it  
19 was at a slope.

20 A. Uh-huh.

21 Q. It had a plywood underlayment?

22 A. Yes.

23 Q. And then felt on top of that?

24 A. Uh-huh.

25 Q. And then this product --

1 A. Yes.

2 Q. -- was set up horizontally?

3 A. Uh-huh.

4 Q. And then there were tiles put on top of  
5 that; is that correct?

6 A. We put tiles on about half, the bottom  
7 half and left the top half exposed, and we also  
8 rigged it with a hose that was running in a very  
9 low volume. We put a metal piece across the top  
10 that would distribute water across the assembly.

11 Q. Okay.

12 A. We turned on the water and left it on for  
13 at least a couple of weeks, left it on for a long  
14 time.

15 Q. What was the purpose of doing that?

16 A. My concern -- I'd thought about other  
17 products or other things that could be used in  
18 lieu of cedar battens for years, ever since -- I  
19 guess I'm kind of a weirdo that way. Ever since  
20 I got into the tile industry, I was trying to  
21 come up with a different idea than cedar battens.  
22 I'd come up with a couple things. One of my  
23 ideas was to use product that was similar to  
24 something on the market called, Yellow Spaghetti  
25 Walk Mat. It's used in commercial buildings,

1 about this would have been by mail; is that  
2 correct?

3 A. Probably fax and telephone, more likely  
4 telephone.

5 Q. Did you ever fax anything, any drawing or  
6 writing about that?

7 A. No.

8 Q. Diversi-Plast?

9 A. No.

10 Q. Did you take any notes about the idea?

11 A. No.

12 Q. Do you know of anyone else that took  
13 notes about the idea?

14 A. No. I'm not aware of any.

15 Q. I'm going to refer you to an exhibit that  
16 was previously marked as depo Exhibit Number 42.  
17 This is a representation of a Circa 1998 soffit  
18 vent that was drawn up by Mr. Morris during his  
19 deposition.

20 Now, we have talked about the structure  
21 of the product, and you stated that it was  
22 product that Diversi-Plast sent to you that you  
23 used in this experiment?

24 A. Yes.

25 Q. Does that drawing correspond to the

1 structure of that product?

2 MR. MACARI: I'm going to object. For  
3 the record, this is a sketch by another  
4 individual. It doesn't look to be complete, but  
5 to the extent it's worth what it's worth, you can  
6 go ahead and testify.

7 THE WITNESS: Your question is, does this  
8 look like what I got?

9 Q. (By Mr. Wilcox) Correct.

10 A. Quite a bit taller than what I got.

11 Q. Let's go over what the differences are  
12 between this and what you got. The dimension  
13 tall, it says less than two inches. You stated  
14 that about how tall was what you got?

15 A. What I got would have been a maximum of  
16 three-quarters of an inch.

17 Q. As far as width, it says here less than  
18 four inches?

19 A. Yeah, what I received would be much more,  
20 was probably an inch and a half.

21 Q. And the length is about, it says that  
22 it's four feet?

23 A. That's about the same.

24 Q. And as far as the representations that  
25 are labeled one, two, and three, are those

1 similar to what you got?

2 A. What do you mean?

3 Q. There are representations of, I guess  
4 corrugated plastic.

5 MR. MACARI: Object for the record.

6 Again, this drawing isn't complete. It doesn't  
7 seem. I don't know what he is pointing to, but  
8 you can go ahead and answer to the extent you  
9 can.

10 THE WITNESS: It was layers of corrugated  
11 plastic.

12 Q. (By Mr. Wilcox) By corrugated, meaning,  
13 having, I guess those are corrugations, having  
14 those angulations; is that correct?

15 A. Having flutes.

16 Q. Having flutes, thank you. Can you see  
17 any other differences between the structure  
18 represented here and what you got?

19 A. I don't recall how it was -- they were --  
20 the layers were fastened.

21 MR. MACARI: I'll object. This doesn't  
22 -- obviously, this drawing doesn't provide all  
23 the information about the Circa 1998 soffit.

24 Q. (By Mr. Wilcox) Have you ever met  
25 Richard Morris?

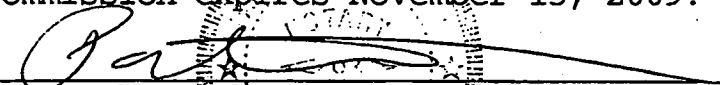
REPORTER'S CERTIFICATE

I, PATRICIA VIGIL-LADNER, Registered Professional Reporter and Notary Public in and for the State of Colorado, duly commissioned to administer oaths, do hereby certify that, previous to the commencement of the examination, the witness was duly sworn by me to testify to the truth in relation to the matters in controversy between the said parties; that the said deposition was taken in stenotype by me at the time and place aforesaid and was thereafter reduced to printed form by use of computer-assisted transcription under my supervision; that the foregoing pages is a true and correct transcript of my stenotype notes thereof;

That I am not attorney nor counsel, nor in any way connected with any of the parties to said action, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF: I have affixed my signature and seal this 16<sup>th</sup> day of January 2006.

My commission expires November 15, 2009.

  
PATRICIA VIGIL-LADNER, RPR  
Registered Professional Reporter and  
Notary Public